

September 22, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Communication
MB Docket No. 16-42, CS Docket No. 97-80

Dear Ms. Dortch:

On September 20-22, 2016, Kyle Dixon of Time Warner Inc., Susan Fox of The Walt Disney Company, Anne Lucey of CBS Corporation, Keith Murphy of Viacom Inc., and Jared Sher of 21st Century Fox, Inc., had a series of meetings at the FCC, as follows: (1) Marc Paul, Legal Advisor to Commissioner Jessica Rosenworcel (September 20); (2) Jessica Almond, Legal Advisor to Chairman Wheeler and John Williams of the Office of General Counsel (September 20, 21 and 22 (the latter by phone)); and (3) Matthew Berry, Chief of Staff to Commissioner Ajit Pai (September 21). Kimberly Hulse, of Scripps Networks Interactive, joined only for the September 22 phone call with Jessica Almond and John Williams but supports and aligns with the views expressed herein. The purpose of the meetings was to express and explain the nature of programmers' concerns with what we understand to be the most recent FCC proposals regarding the marketplace for multichannel video programming navigation equipment.

The programmer representatives began their meetings by again expressing their appreciation that the Commission is considering a revised approach in this proceeding that would ensure that all of programmers' valuable content would remain inside of, and under the control of, apps developed exclusively by multichannel video programming distributors (MVPDs) with whom programmers have a direct contractual relationship. However, the programmer representatives noted that they remain concerned that whatever regime the Commission adopts not require the distribution of content in ways to which programmers do not agree, as explained more fully in their Comments and Reply Comments. During the meetings, the programmer representatives focused on several concerns with respect to the pending proposal.

First, the programmers stressed their continuing concern with any regulatory construct by which the Commission would assert the ability to review and/or alter the provisions contained in any existing or future license that permits the distribution of copyrighted video programming. The programmer representatives explained their legal concern that any arrangement in which their content is distributed on terms or conditions

to which programmers do not agree would be tantamount to a compulsory copyright license, which the Commission lacks authority to impose. The programmer representatives therefore submitted that the Commission should refrain from exercising any and all form of oversight or review over the terms and conditions of any license that results in the distribution of content, including both programmers' distribution agreements with MVPDs and licenses for MVPD apps with device manufacturers and online platforms. The Commission should not – through review of license terms, adjudications or complaint processes, or any other means – create an end result in which programmers are forced to distribute content on terms that conflict with or otherwise undermine their affiliate agreements with MVPDs.

Second, the programmer representatives stressed the argument contained in the Programmer Comments and Reply Comments that third-party platforms, when distributing MVPD apps or any content, should be required to abide by all of the terms and conditions set forth in programmers' licenses with MVPDs and that the FCC should not take any action to restrict programmers' marketplace negotiations in the future.

To the extent that the Commission has any residual concern about the development of the app marketplace absent FCC oversight over the terms and conditions of licenses, the parties discussed the FCC conducting a reevaluation of the marketplace two years after any deadline for launching MVPD apps (i.e., in 2020). This would provide time for apps to be deployed and for the app market to develop and function and, if necessary at the conclusion of that period, enable the Commission to assess whether any additional steps – consistent with its authority – should be taken. We discussed that the FCC, in the interim, decline to entertain any complaints regarding the terms and conditions of license.

When asked for their perspective on a few recently-filed ex partes by Amazon, several programmer representatives noted their concerns with that proposal, given the lack of sufficient detail to assess any resulting regulatory proposal, the inclusion of the FCC complaint process as proposed in the ex partes, and the lack of programmer involvement in the creation or enforcement of the MVPD app licenses apparently anticipated by the ex partes.

This letter is being submitted electronically in the above-referenced dockets, which have been granted permit-but-disclose status, pursuant to Section 1.1206(b) of the Commission's Rules. Should you have any questions concerning this submission, kindly contact any of the undersigned.

Respectfully submitted,

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